

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID B. PUSHKIN,

Plaintiff,

10 Civ. 9212 (JGK) (DCF

- against -

MEMORANDUM OPINION AND  
ORDER

BETH NUSSBAUM, ET AL.,

Defendants.

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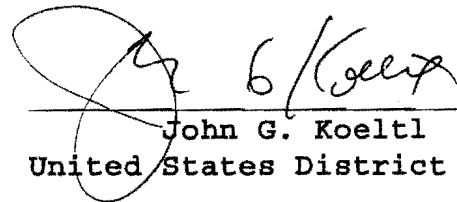
JOHN G. KOELTL, District Judge:

Pro se plaintiff David Pushkin moves for a default judgment against defendants Aronsohn Weiner and Salerno, L.L.C. and Kevin L. Bremer. The plaintiff argues that a default judgment is proper because these defendants did not appear in response to the process that was mailed to them with an acknowledgment and waiver of service form earlier this year. However, it is plain that the defendants have not "failed to plead or otherwise defend" this case within the terms of Federal Rule of Civil Procedure 55, and thus a default judgment should not be entered. Any alleged failure to respond timely was not willful. Moreover, this Court maintains a strong preference for resolving disputes on the merits, rather than on the basis of procedural issues. See Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 95 (2d Cir. 1993). The defendants have demonstrated a desire to defend

against the claims in this case. Accordingly, the plaintiff's motion for a default judgment is **denied**.

SO ORDERED.

Dated: New York, New York  
August 12, 2011

  
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John G. Koeltl  
United States District Judge